LBR BINA DINAMIK (M) SDN BHD

v.

MALAYAN BANKING BHD

HIGH COURT MALAYA, KUALA LUMPUR
KL REKHRAJ J
[SUIT NO: D6-22-2954-1999]
29 DECEMBER 1999

CIVIL PROCEDURE: *Injunction - Ex parte injunction - Injunction restraining bank from paying under letter of guarantee - Need to maintain status quo*

BANKING: *Banker and customer - Duty of care - Letter of guarantee - Demand by beneficiary - Whether bank can debit customer's account on beneficiary's demand - Whether bank must enquire further*

Simultaneously with the issuance of its writ, the plaintiff took out an *ex parte* summons-in-chambers for an injunction to restrain the defendant from making payment to meet a demand made by the beneficiary under the letter of guarantee No 97/39. At the hearing of the application counsel for the defendant conceded that the plaintiff had shown that it was in possession of the original letter of guarantee.

Held:

[1] In light of the admission or undertaking made by counsel for the defendant that the defendant would not pay the demanded sum to the beneficiary since the original letter of guarantee was in the possession of the plaintiff, the injunction was granted to maintain the *status quo* pending the hearing of the writ action.

[2] The defendant owes a duty of care not to debit its own customer's account, purely on demand, without first calling from the person demanding, the original document of title on which rests the liability to pay.

[Injunction granted.]

For the plaintiff - Pramjit Kaur; M/s JM Chong, Vincent Chee & Co
For the respondent - Mazlinda Makhzan; M/s Ng Yook Woon, Andrew TC Saw & Co

Reported by Izzaty Izuddin

JUDGMENT

KL Rekhraj J:

The plaintiffs filed a writ action against the defendants for a prayer that:

(i) the defendants by themselves or through their agents or representatives be restrained from paying and/or releasing a sum of RM211,000 or any other sum from the plaintiffs account with the defendants bearing account number 014105-316363 and or under the banks letter of guarantee No. 97/39 dated 18 November 1997, favouring Majlis Perbandaran Melaka Bandaraya Bersejarah (hereinafter called "the Majlis") – the beneficiary of the guarantee.

(ii) for a Declaratory Order that the said letter of guarantee 97/39 was not encashable but self-defeating as it is in the possession of the plaintiffs.

The plaintiff simultaneous with the issuance of the writ took out an *ex parte* summons in chambers for an injunction to restrain the defendants in the payment of the demanded sum; and the court directed that that said *ex parte* be made and heard *inter partes* on 15 November 1999.

The brief facts of the case are relevant in the better understanding of the plaintiffs claim. The plaintiff is the customer of the defendant bank; and as such customer had requested of its bankers to issue them a bank guarantee favouring the third party, ie, the Majlis, for handing over upon the execution of a final agreement to be entered between the plaintiffs on the one part and the said Majlis on the other part.

The said purported agreement to be entered never materialised and the plaintiffs then with-held and retained with themselves the said letter of guarantee No. 97/39. In or around December 1997 the plaintiffs then informed the defendants branch at Dayabumi (the issuing branch) to cancel the said guarantee; but only to be told by the defendants branch representatives – Mr. Oon Swee Bee and Cik Azni bt Abdul Rahman, that the plaintiffs do either produce from the Majlis (the beneficiary), a letter of release consenting to the cancellation or in the alternative to let the said guarantee rest to expire by effluxion of time, which would be on 17 November 1999.

A month before the expiry of the letter of guarantee, the Majlis by its letter dated 19 October 1999, made a demand upon the defendants to pay them a sum of RM211,000 being the amount payable under the guarantee; and the defendant bank upon its receipt, but by its letter dated 27 October 1999, notified the plaintiffs of the demand and intimating to them that the defendant bank will be honouring the claim by debiting the plaintiffs Account No. 014105-316363 on 29 October 1999, without any further notice on the subject matter.

The plaintiffs immediately upon the receipt of that notice of intention to pay, wrote to put them on notice not to pay for reasons:

(i) that the contract or the agreement referred to under the bank's letter of guarantee was never executed and or formalised; and

(ii) that the original letter of bank guarantee, upon which a demand is made, still remains in possession of the plaintiff.

At the hearing of the *inter partes* application, the **counsel for the defendant conceded that by virtue of the fact that the plaintiffs are now shown to be in possession of the original letter of guarantee; the bank will not pay the demanded sum to the beneficiary;** and in the light of that admission or undertaking by their counsel an injunction was granted to the plaintiffs as prayed for in prayer (1) with costs of RM2,000.

It must be borne in mind that the plaintiffs are the customers of the defendant bank, and the bank owes a greater duty of care not to debit its own customers account – purely on a demand, without first calling from the person demanding the original document of title on which rests the liability to pay.

The defendant bank here runs a risk in being sued in negligence in the event it disregards the customers counter-demands or elects to pay in the absence or production of the original letter of guarantee.

The court thus granted the injunction to maintain the *status quo* pending the hearing of the writ action on the second prayer for the Declaratory Order.